

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

RICKY SIMERLY,

Plaintiff,

v.

3:06-cv-114

SHERIFF JAMES BERRONG
and CAPTAIN DAN NEUBERT,

Defendants.

MEMORANDUM OPINION

This is a *pro se* prisoner's civil rights complaint under 42 U.S.C. § 1983. Because the plaintiff did not pay the \$250.00 filing fee¹ nor submit an application to proceed *in forma pauperis*, plaintiff was given thirty days to pay the filing fee or to submit the proper documents to proceed *in forma pauperis*. Plaintiff's copy of that order, which was mailed to him at his last known address of the Blount County Detention Center, was returned undelivered on April 24, 2006, with the notation "not at BCSO - transferred." Accordingly, this action will be **DISMISSED WITH PREJUDICE** for failure to prosecute and to comply with the orders of the court. *See McGore v. Wrigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997). The court hereby **CERTIFIES** that any appeal from this action would not be taken

¹Plaintiff submitted his complaint before the filing fee increased from \$250.00 to \$350.00.

in good faith and would be totally frivolous. *See* Rule 24 of the Federal Rules of Appellate Procedure.

Plaintiff will be assessed the full filing fee. Pursuant to 28 U.S.C. § 1915(b)(1)(A) and (B), the custodian of the plaintiff's inmate trust account at the institution where he now resides is directed to submit to the Clerk, U.S. District Court, 800 Market Street, Suite 130, Knoxville, Tennessee 37902, as an initial partial payment, whichever is greater of:

(a) twenty percent (20%) of the average monthly deposits to the plaintiff's inmate trust account; *or*

(b) twenty percent (20%) of the average monthly balance in the plaintiff's inmate trust account for the six-month period preceding the filing of the complaint.

Thereafter, the custodian shall submit twenty percent (20%) of the plaintiff's preceding monthly income (or income credited to the plaintiff's trust account for the preceding month), but only when such monthly income exceeds ten dollars (\$10.00), until the full filing fee of one hundred fifty dollars (\$250.00) as authorized under 28 U.S.C. § 1914(a) has been paid to the Clerk. 28 U.S.C. § 1915(b)(2).

AN APPROPRIATE ORDER WILL ENTER.

s/ James H. Jarvis
United States District Judge